

भारत का राजपत्र **The Gazette of India**

असाधारण
EXTRAORDINARY

भाग 2—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 52] नई दिल्ली, शुक्रवार, नवम्बर 27, 1970/अग्रहायण 6, 1892
No. 52] NEW DELHI, FRIDAY, NOVEMBER 27, 1970/AGRAHAYANA 6, 1892

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 27th November, 1970:—

BILL No. XXXII OF 1970

A Bill further to amend the Industrial Disputes Act, 1947

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

1. This Act may be called the Industrial Disputes (Amendment) Act, 1970. Short title.
2. In sub-clause (a) of clause (oo) of section 2 of the Industrial Disputes Act, 1947 (hereinafter referred to as the principal Act), after the word "workman", the words "except when the voluntary character of the retirement is disputed by the workman" shall be inserted. Amendment of section 2.
3. In section 9A of the principal Act, the following *Explanation* shall be inserted at the end, namely:— Amendment of section 9A.

*"Explanation.—*The conditions of service with regard to matters specified in items Nos. 10 and 11 of the Fourth Schedule shall be deemed to be implied conditions of service of every workman."*"*
4. In section 10 of the principal Act, after the second proviso to sub-section (1), the following further proviso shall be inserted, namely:— Amendment of section 10.

"Provided also that where the dispute relates to the conditions of service with regard to any of the matters specified in items Nos. 10 and 11 of the Fourth Schedule, the appropriate Government shall, unless it considers that it would be inexpedient so to do, make a reference under this sub-section."

Insertion
of new
section 10B.

5. After section 10A of the principal Act, the following new section shall be inserted, namely:—

Reference of
disputes re-
lating to
termina-
tion of
services by
way of
early
voluntary
retirement.

"10B. (1) Where an industrial dispute relating to the termination of services of a workman by way of early voluntary retirement has been referred to a Labour Court, Tribunal or National Tribunal for adjudication, and in the course of the adjudication, and in the course of the adjudication proceedings, the Labour Court, Tribunal or the National Tribunal, as the case may be, is satisfied that such termination was not justified, it may, by its award, set aside the termination and direct reinstatement of the workman.

(2) On such reinstatement under sub-section (1) the payment, if any, received by the workman for such voluntary retirement shall be adjusted against the wages due to the workman."

Amend-
ment of
Fourth
Schedule.

6. In the Fourth Schedule to the principal Act, for item 10, the following shall be substituted, namely:—

"10. Rationalisation and reorganisation, standardisation or improvement of plant or technique including introduction of automation which is likely to result in surplus workmen or abolition of jobs;"

STATEMENT OF OBJECTS AND REASONS

For some time past an agitation has been going on in some of the petroleum oil companies where a number of workmen had, in fact, been coerced by the managements to retire prematurely under schemes of early voluntary retirement. As protracted efforts at various levels did not succeed in resolving the dispute, Government had to appoint a Commission of Inquiry under Shri B. N. Gokhale, former Judge of the High Court of Judicature at Bombay, to go into the whole question of job security in the oil companies. The Commission's recommendations also were not fruitful in bringing about a settlement.

Considering all the aspects of the matter, the conclusion seems inescapable that the remedy for affording job security to workmen in these, and in fact in all such industrial undertakings, may lie in making suitable provisions in this regard in the Industrial Disputes Act, 1947, so that measures of rationalisation, reorganisation, etc. and those leading to reduction in employment—which are not covered by the existing section 9A of the Act—would fall under the implied conditions of service and the workmen could then demand a notice of change in such matters, and failing mutual agreement, invoke the machinery of conciliation, etc., for resolving outstanding disputes. Once this is done, the matter can be taken up in conciliation either by a Conciliation Officer or a Conciliation Board, and, where necessary, the appropriate Government can proceed to refer it to adjudication. The definition of the term 'retrenchment' in section 2(oo) of the Industrial Disputes Act, 1947 would also need to be amended to include cases of early voluntary retirement of workmen where their voluntary nature is itself in dispute.

Hence the amendments.

CHITTA BASU.

BILL No. XXXIV OF 1970

A Bill further to amend the Industrial Disputes Act, 1947

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

Short
title and
com-
mence-
ment.

1. (1) This Act may be called the Industrial Disputes (Amendment) Act, 1970.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amend-
ment of
section 2.

2. In section 2 of the Industrial Disputes Act, 1947, in clause (s), after the words "discharge or retrenchment has led to that dispute." the words "or in the case of the death of the workman his assignee or heirs," shall be inserted. 14 of 1947.

STATEMENT OF OBJECTS AND REASONS

Industrial Disputes Act, 1947 is intended to offer a system for settlement of industrial disputes. The proceedings under the Act ordinarily start with conciliation proceedings; failing settlement the matter is referred for adjudication and an award given by an adjudicator, if not implemented, is referred to for computation under section 33C of the Industrial Disputes Act, 1947. This section has been amended by the Industrial Disputes (Amendment) Act, 1964 to give a right to the "heirs and assignee" of a deceased workman for the purpose of computation proceedings and recovery of dues from the employer. But no such right exists for heirs or assignee of a deceased workman to proceed with a dispute in the "conciliation proceedings" or "adjudication proceedings". Consequently, the right of a workman abates in such proceedings, the moment he dies, on the plea that a dead workman is not a "workman" within the meaning of the term as defined in the Industrial Disputes Act, 1947. Justice should not, therefore, be denied under this Act to the heirs and assignees of a deceased workman.

The proposed Bill seeks to achieve the above object.

DWIJENDRALAL SEN GUPTA.

BILL NO. XXXIII OF 1970

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

Short
title.

1. This Act may be called the Constitution (Amendment) Act, 1970.

Amend-
ment of
article
240.

2. In sub-clause (a) of clause (1) of article 240 of the Constitution, for the words “the Andaman and Nicobar Islands”, the words “Shaheed and Swaraj Islands” shall be substituted.

Amend-
ment of
the First
Schedule
to the
Constitu-
tion.

3. In the First Schedule to the Constitution, under the heading “II. The Union Territories”, in the column containing the names of the Union territories, in entry 5, for the words “the Andaman and Nicobar Islands”, the words “the Shaheed and Swaraj Islands” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The Andaman Islands have a very close and intimate connection with the struggle for independence of the country. A number of stalwarts, notably Lokmanya Tilak, Barindra Kumar Ghose, Abinash Bhattacharyya, Lala Lajpat Rai, V. D. Savarkar and others at some time or the other were imprisoned there.

Public opinion in the country has been strongly in favour of changing the name of these islands to commemorate the memory of all those martyrs who sacrificed their lives for the country. Views have been expressed within and without Parliament that these islands should more appropriately be named "the Shaheed Dwips" in memory of these martyrs (*shaheeds*). Moreover, because of the "*shaheeds*" (martyrs) we have been able to win swaraj, that is, independence. Therefore, in the fitness of things, these islands should be named "Shaheed and Swaraj Islands".

Hence this Bill.

D. L. SEN GUPTA.

BILL No. XXXV OF 1970

A Bill further to amend the Payment of Bonus Act, 1965.

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

Short
title and
com-
mence-
ment.

1. (1) This Act may be called the Payment of Bonus (Amendment) Act, 1970.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Substitu-
tion of
new
section
for
section
10.

2. For section 10 of the Payment of Bonus Act, 1965, the following 21 of 1965.
section shall be substituted, namely:—

Payment
of mini-
mum
bonus.

“10. Subject to the provisions of sections 8 and 13, every employer shall be bound to pay to every employee in an accounting year a minimum bonus which shall be eight per cent. of the salary or wage earned by the employee during the accounting year or eighty rupees whichever is higher, irrespective of profits or loss in the accounting year:

Provided that where such employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words “eighty rupees” the words “fifty rupees” were substituted.

STATEMENT OF OBJECTS AND REASONS

Section 10 of the Payment of Bonus Act, 1965, provides for payment of the minimum bonus at four per cent. of the salary or wage earned by an employee during the accounting year or forty rupees, whichever is higher. Experience of the last few years has revealed that the quantum of minimum bonus fixed by this Act is extremely inadequate. Many employers in West Bengal have already agreed to give 8 per cent. of the annual earning as bonus, though the excess 4 per cent. is sometimes termed as "*Ex gratia*". Even before this legislation, one month's pay was the minimum bonus in West Bengal, in many concerns. That was more than 4 per cent. of the annual earning. For the same reason the amendment to the proviso to section 10 of the Act is also suggested. Opportunity is being taken to suitably amend the expression "whether there are profits in the accounting year or not" with a view to avoid unnecessary legal complications.

The amendment proposed in the Bill seek to achieve these objects.

DWIJENDRALAL SEN GUPTA.

BILL NO. XXXI OF 1970

A Bill to provide for the protection of certain constitutional rights of the Members of Parliament and State Legislatures during preventive detention.

BE it enacted by Parliament in the Twenty-first year of the Republic of India as follows:—

1. This Act may be called the Members of Parliament and State Legislatures (Protection of certain constitutional rights during Preventive Detention) Act, 1970. Short title.

2. Notwithstanding anything contained in any law providing for preventive detention, where a Member of Parliament or of the Legislature of a State is detained under any such law, he shall be entitled to exercise his right to attend and shall have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or of the Legislature of a State or any committee thereof, as the case may be. Right of a Member of Parliament or of the Legislature of a State detained under any law relating to preventive detention.

3. It shall be the duty of the Central Government or the State Government, as the case may be, to make all such arrangements as may be necessary to enable a Member of Parliament or of the Legislature of a State, who is so detained to attend, if he so desires, the Houses of Parliament or the State Legislature, as the case may be.

Duty of
Govern-
ment.

STATEMENT OF OBJECTS AND REASONS

The Constitution confers valuable Rights on the Members of Parliament and State Legislatures to be present in the House to participate in its proceedings and to vote on all questions arising therein.

The Preventive Detention laws permit detention of Members of Parliament and State Legislatures on the subjective satisfaction of the Central and State Governments.

The Supreme Court in its historic order, passed on the 4th September, 1970, protected the Constitutional Rights of a Member of the Rajya Sabha in preventive detention by permitting him to participate in the proceedings of, and vote in, the Rajya Sabha.

It is essential that the Constitutional Rights of Members of Parliament and State Legislatures referred to above should no longer be allowed to remain precarious.

Hence this Bill.

GODEY MURAHARI

BILL No. XXX of 1970

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1970.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In paragraph (a) of the proviso to clause (1) of article 56 of the Constitution for the words "the Vice-President" the words "the Chief Justice of India or, in his absence, the seniormost Judge of the Supreme Court of India available" shall be substituted.

3. In the *Explanation* to article 58 of the Constitution the words "or Vice-President" shall be omitted.

4. Article 63 of the Constitution shall be omitted.

Short
title and
com-
mence-
ment.

Amend-
ment of
article 56.

Amend-
ment of
article 58.

Omission
of article
63.

Omission
of article
64.

5. Article 64 of the Constitution shall be omitted.

Substitu-
tion of
new
article for
article 65.

6. For article 65 of the Constitution, the following article shall be substituted, namely:—

Discharge
of Presi-
dent's
functions
in certain
contin-
gencies.

"65. (1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court of India available shall discharge the functions of the President until a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Chief Justice of India or, in his absence, the seniormost Judge of the Supreme Court of India available shall discharge his functions until the date on which the President resumes his duties.

(3) The person discharging the functions of the President under this article shall, during, and in respect of, the period while he is so discharging the said functions, have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments, allowances and privileges as are specified in the Second Schedule."

Omission of
article 66.

7. Article 66 of the Constitution shall be omitted.

Omission
of
article 67.

8. Article 67 of the Constitution shall be omitted.

Omission
of
article 68.

9. Article 68 of the Constitution shall be omitted.

Omission
of arti-
cle 69.

10. Article 69 of the Constitution shall be omitted.

Amend-
ment of
article 71.

11. In clauses (1), (2), (3) and (4) of article 71 of the Constitution the words "or Vice-President" shall be omitted.

Substitu-
tion of
new
article for
article 89.

12. For article 89 of the Constitution, the following article shall be substituted, namely:—

The Chair-
man and
Deputy
Chairman
of the
Council of
States.

"89. The Council of States, shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be."

13. For article 90 of the Constitution, the following article shall be substituted, namely:—

Substitution of new article for article 90.

"90. A Member holding office as Chairman or Deputy Chairman of the Council of States—

Vacation and resignation of, and removal from the offices of Chairman and Deputy Chairman

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time, by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is Deputy Chairman to the Chairman, resign his office; and

(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution."

14. In clause (1) of article 91 of the Constitution, the words "or during any period when the Vice-President is acting as, or discharging the functions of, President," shall be omitted.

Amendment of article 91.

15. In article 92 of the Constitution,—

Amendment of article 92.

(a) in clause (1) for the word "Vice-President" the word "Chairman" shall be substituted; and

(b) for clause (2) the following clause shall be substituted, namely:—

"(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of the Council of States while any resolution for his removal from office is under consideration in the Council and shall notwithstanding anything in article 100, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes."

16. In clause (1) of article 324 of the Constitution, for the words "of elections to the offices of President and Vice-President" the words "of election to the office of President" shall be substituted.

Amendment of article 324.

17. In the Second Schedule to the Constitution, for paragraph 4 of Part A, the following shall be substituted, namely:—

Amendment of the second schedule.

"4. While any person is discharging the functions of the President, or of the Governor, he shall be entitled to the same emoluments, allowances and privileges as the President or the Governor whose functions he discharges, as the case may be."

18. In the Seventh Schedule to the Constitution, in entry 72 of the Union List, for the words "the offices of President and Vice-President" the words "the office of President" shall be substituted.

Amendment of entry 72 of Union List.

1969 19. The President (Discharge of Functions) Act, 1969 is hereby repealed.

Repeal.

STATEMENT OF OBJECTS AND REASONS

The makers of the Constitution had envisaged two functions for the Vice-President of India, firstly, under article 65, to act as President in the event of occurrence of any vacancy in the office of President by reason of his death, resignation or removal, or otherwise, or discharge the functions of President when the President is unable to discharge his functions owing to absence, illness or any other cause, and secondly, to preside over the meetings of the Rajya Sabha in his capacity as the *ex-officio* Chairman of the Council of State (Rajya Sabha), *vide* article 64. Of late it has become imperative that for the smooth functioning of the Rajya Sabha there should be a permanent Chairman whose sole function would be to preside over the meetings of the Rajya Sabha. By the President (Discharge of Functions) Act, 1969, Parliament has provided that in the event of occurrence of vacancies in the offices of both the President and the Vice-President, the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court of India available shall discharge the functions of the President until a new President is elected in accordance with the provisions of the Constitution. In view of this legislative measure it is felt that there is no longer any necessity for a separate office of the Vice-President and instead the Rajya Sabha should have a whole-time Chairman to preside over its deliberations.

By this amending Bill, it is proposed to abolish the office of Vice-President and to make provision for a whole-time Presiding Officer for the Rajya Sabha on the lines of the Speaker of the Lok Sabha.

ARJUN ARORA.

B. N. BANERJEE,
Secretary.